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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-54
GAF BROADCASTING COMPANY, INC.)	
For Renewal of License of)	
Station WNCN(FM), New York, New York)	
CLASS ENTERTAINMENT AND)	
COMMUNICATIONS, L.P.)	File No. BPH-910430ME
THE FIDELIO GROUP, INC.)	File No. BPH-910502MQ
For a Construction Permit for a)	
new FM Station to operate on)	
Channel 282B in New York, New York)	
TO: The Commission		

MOTION FOR DEFERRAL OF PROCEDURAL DATES

1. The Fidelio Group, Inc. ("Fidelio") hereby respectfully moves for a deferral of all procedural dates in the above-captioned proceeding pending resolution of various matters, described below, any or all of which are likely to affect the course of this case.

2. This comparative renewal case would in any event be relatively complex. At issue are three applications: the renewal application of GAF Broadcasting Company, Inc. ("GAF") for the license of Station WNCN(FM), New York, New York, as well as two competing applications -- one filed by Fidelio, the other by Class Entertainment and Communications, L.P. ("Class") -- for that station's frequency. In addition, petitions to deny GAF's application were filed by several groups, including Class, Listeners' Guild, Inc. ("Guild") and the New York State

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Conference of Branches of the NAACP ("NAACP").

3. In the Hearing Designation Order ("HDO") in this proceeding, GAF Broadcasting Company, DA 93-226, released March 15, 1993, the Chief, Audio Services Division, unfortunately created substantial further complexities which could result in serious disruption of the conduct of this case. First, the HDO denied the Class and Guild petitions to deny. But in denying the Class and Guild petitions relative to questions concerning, inter alia, GAF's basic qualifications, the HDO relied on the

delay than would normally be the case. By way of illustration, the HDO appears to contemplate that the basic comparative hearing will be held simultaneously with the briefing and argument on the Guild/Class appeal of the Commission's 1992 decision in GAF Corporation and simultaneously with the EEO Branch's consideration of NAACP's allegations concerning GAF's employment practices. But both the Guild/Class appeal and the EEO inquiry could likely have a serious impact on the resolution of the comparative case: if the Court of Appeals determines that inquiry into GAF's basic qualifications is appropriate, then that inquiry would normally be folded into this proceeding (as Guild and Class had already urged in their respective petitions). A similar expansion of the issues herein would normally result from a determination by the EEO Branch adverse to GAF.

6. Still further complications arise from the HDO's treatment of Guild and Guild's allegations. Since the HDO did not address certain of those allegations, Guild may have to seek reconsideration of the HDO, or it may seek to intervene into the proceeding for the purpose of filing a petition to enlarge addressing those hitherto unresolved matters. And since Guild's status as a party was neither affirmed nor denied, Guild may in any event have to seek intervention (whether or not Guild ultimately elects to file a petition to enlarge) if it wishes to provide the Commission with information relevant to GAF's

qualifications and performance as a licensee. ^{1/}

7. The parties therefore are being forced to litigate in a piecemeal fashion before multiple fora, despite the fact that coordinated, orderly litigation would plainly be possible through appropriate deferral of the instant proceeding pending disposition of the Guild/Class appeal and the EEO Branch inquiry. Additionally, deferral would permit clarification of Guild's continuing status vis-à-vis this case, thereby avoiding yet another loose litigation end from confusing and distracting the course of the case.

8. Fidelio proposes that all procedural dates in the instant comparative renewal proceeding be deferred pending final resolution of (a) the Guild/Class appeal by the Court of Appeals, (b) the EEO Branch inquiry into GAF's employment practices, and (c) any pleadings which Guild might file by way of reconsideration or intervention herein. ^{2/} It makes no sense from the perspective of any of the litigants, or the Commission, to charge forward into litigation which will be needlessly

^{1/} Undersigned counsel has been informally advised by counsel for Guild that Guild presently contemplates filing multiple pleadings, possibly seeking reconsideration and intervention, in which these and related matters will be addressed.

^{2/} The procedural dates presently pending establish deadlines for the submission of: an environmental assessment and certain engineering information (by Fidelio); integration statements (by Class and Fidelio); a statement concerning renewal expectancy (by GAF); a report (by all parties) concerning efforts to reach agreement concerning discovery; the prehearing conference; and, of course, the hearing itself. The deferral sought by Fidelio would apply to all of these matters, and any other deadlines which might be established in this proceeding.

complex and delayed when a modest deferral of the instant case will permit an efficient, consolidated investigation of all relevant issues in a single proceeding.

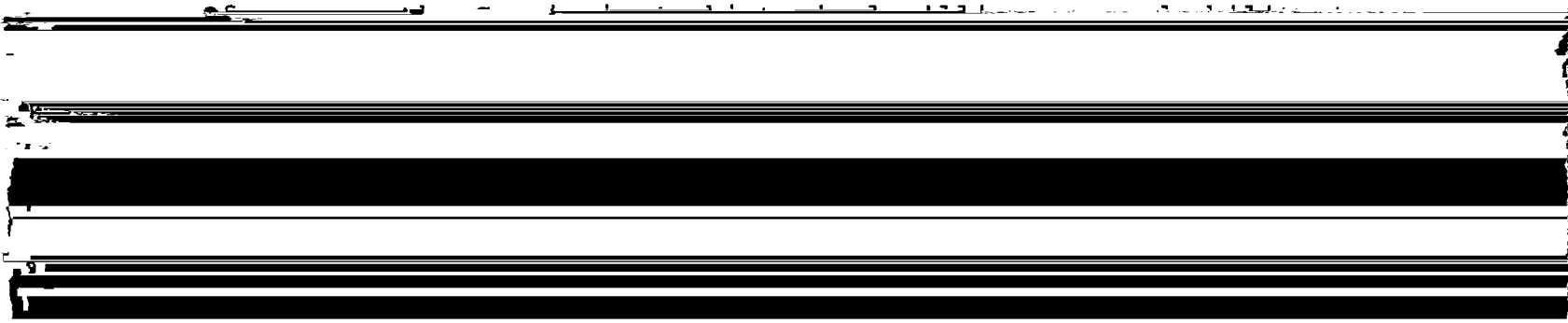
9. To the extent that this Motion is deemed subject to standards for stays, Fidelio submits that those standards are satisfied. In order to obtain a stay, a moving party must meet the four-part test set out in, e.g., Washington Metro Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) and Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958). First, the movant must demonstrate that there exists a likelihood that it will prevail on the merits. Second, it must show that, absent a stay, it will be irreparably injured. Third, it must show that issuance of the stay will not harm the other interested parties. And fourth, it must show that the grant of the stay will be in the public interest.

10. The first standard is not directly applicable

if such compensation were otherwise available to Fidelio (and other similarly situated parties).

11. Third, the proposed stay would not harm any other party. As an incumbent licensee, GAF continues its normal broadcast operation without serious impediment, and therefore cannot be said to be suffering any harm. While Fidelio, Class, Guild and NAACP would, if the stay were granted, suffer delay in the resolution of their individual claims, the advantages to be gained from streamlining and consolidation of this proceeding far outweigh any arguable harm which might be attributable to such delay. And finally, the public interest would be advanced as a result of the economies of public and private resources which would likely be realized from a sensibly-scheduled, relatively unified course of litigation.

12. It should also be noted that, by diffusing the various allegations against GAF and by directing them to various different fora for disposition, the HDO has substantially increased the burden on GAF's challengers. Such an increased burden is inconsistent with the statutory guarantee of the opportunity to compete on an even basis for broadcast licenses.



through the simple expedient of coordinated and rational scheduling, all relevant issues can be litigated in a prompt and efficient manner. The requested stay is intended to promote just such prompt and efficient litigation.

WHEREFORE, for the reasons stated, The Fidelio Group, Inc. requests that all procedural dates in the above-captioned case be stayed pending final resolution of the pending appeals of Guild and Class of the Commission's decision in GAF Corporation, 7 FCC Rcd 3225 (1992), the EEO Branch's inquiry into GAF's employment practices (see n. 1 of the HDO) and any reconsideration or intervention which Guild might file with respect to the HDO.

Respectfully submitted,


/s/ Harry F. Cole
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Counsel for The Fidelio Group, Inc.

April 12, 1993

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 12th day of April, 1993, I caused copies of the foregoing "Motion for Deferral of Procedural Dates" to be hand-delivered (as indicated below) or sent, by first class United States mail, postage prepaid, to the following:

The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications
Commission

Morton L. Berfield, Esquire
Cohen & Berfield, P.C.
Board of Trade Building
1129 20th Street N.W.